

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 Before The Honorable Thomas S. Hixson, Magistrate Judge  
4  
5 EPIC GAMES, INC., )  
6 Plaintiff, )  
7 vs. ) Case No. C 20-05640-YGR  
8 APPLE, INC., )  
9 Defendant. )

10  
11 San Francisco, California  
12 Friday, February 14, 2025

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
14 RECORDING 1:02 - 1:18 = 16 MINUTES

15 APPEARANCES:

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1 Friday, February 14, 2025

1:02 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: All right, everyone. Good afternoon.  
5 We are here in civil action 20-5640, Epic Games, Inc.,  
6 versus Apple, Inc., the Honorable Thomas S. Hixson  
7 presiding.

8 Counsel, please state your appearances for the record.  
9 Let's start with the Plaintiff's counsel.

10 MR. EVEN (via Zoom): Good afternoon, your Honor.  
11 Yonatan Even for Epic Games.

12 THE COURT: Good afternoon.

13 MR. PERRY (via Zoom): Good afternoon, your Honor.  
14 Mark Perry for Apple.

15 THE COURT: Good afternoon.

16 In the joint statement, Epic stated that the parties  
17 were intending to meet and confer on several topics after  
18 the filing of the report, and Epic thought that it would be  
19 useful to have the status conference.

20 So let me turn to Epic. What issues would you like to  
21 discuss?

22 MR. EVEN: Thank you, your Honor. So I think  
23 mostly it's an update to your -- for your Honor on where the  
24 parties are. The parties had, I think, a very fruitful  
25 meet-and-confer, and agreed to some agreements that are

1 going to affect kind of the process, obviously, subject to  
2 your Honor's approval.

3       So what we have tried to do is to compress the timing  
4 between now and the 24th, so that we can make the best use  
5 of the prioritization of certain documents for the special  
6 masters to review, and so where we landed, Epic proposed and  
7 Apple helpfully agreed, is that Apple is going to produce  
8 all the documents that were redacted, as well as all the  
9 documents that were overruled, and Apple does not intend to  
10 object to that ruling, this week by Tuesday.

11       Apple also has committed to endeavor, or at least try,  
12 to produce thereafter any documents that the special masters  
13 continue to rule on that are redacted within 72 hours, and  
14 the same for any documents that have gone to your Honor, and  
15 your Honor has ruled on, and they need to be produced as a  
16 result, whether in redacted form or some other form, and so  
17 any additional rulings that come from your Honor will still  
18 be helpful for the parties, I think, in advance of that  
19 hearing.

20       Apple has then said that it will endeavor to produce  
21 anything after Tuesday, within 96 hours, to the extent the  
22 special masters have overruled something just because it  
23 needs another 24 hours to decide whether to object or not.

24       So that is in terms of compressing the time line. Then  
25 the parties also agreed to take somewhat of a hiatus, again

1 subject to your Honor's approval, and if your Honor thinks  
2 that we need to alert Judge Gonzalez Rogers to that, we will  
3 obviously do so, but the idea is that any objection process  
4 that has not begun by next Thursday will be tolled until,  
5 probably, I think, February 28th, so after the couple of  
6 days after the hearing, and so both parties can turn their  
7 focus fully to the hearing the following week.

8       The idea is that the special masters are going to  
9 continue in the meantime to review and provide us with  
10 reports, and just the time for us to file any objections and  
11 responses is going to be tolled if that is acceptable to  
12 your Honor.

13       So those are things that have been raised and agreed  
14 to. There is one outstanding request from Epic to Apple  
15 which is relevant as well, I think, which is what to do  
16 about documents that have been produced in redacted form.  
17 Epic's view is that the protocol, unfortunately, doesn't  
18 really speak about what to do with those.

19       Obviously, the protocol speaks to objections, but Epic  
20 can't object to documents that are -- that Apple sought to  
21 redact, based simply on the ruling from the special masters,  
22 because, at that point, we don't even know what has and  
23 hasn't been redacted. We don't have the documents.

24       And so what we asked Apple to agree to is that  
25 documents that are produced in redacted form, Epic will have

1 a couple of weeks to review from the date they've been  
2 produced, and then, if there are objections -- I don't  
3 expect it from anybody -- if there are any objections, we  
4 will have an opportunity to do this, and Apple has taken  
5 that back and said it will respond.

6 That is where we are about the meet-and-confer. I have  
7 two other short updates, if I may, your Honor.

8 THE COURT: Yes. Please go ahead.

9 MR. EVEN: Yes. One is with respect to the issue  
10 of documents that the special masters have reviewed and  
11 essentially sent back to Apple to re-review and redact,  
12 after Apple initially asked to withhold, and the special  
13 masters have set a conference with them on that issue for  
14 next Tuesday. So there's nothing for your Honor to do about  
15 it right now, just I know we have put it in the status  
16 report.

17 So that's the latest status on that, and then the last  
18 thing is that your Honor has asked us to meet and confer  
19 about entry 1219 that we objected to in Docket 1147, and I  
20 think where we are on that is that Epic asked Apple to  
21 really try and provide a minimal redaction of that document  
22 based on our review of the document. Apple has sent us  
23 something, and I think we're either there or very close.  
24 It's about two percent of the document, I would say, is  
25 redacted, so I think we're there. I need to read it one

1 more time after this conference.

2 And the last point is that the parties met and  
3 conferred about the prioritization, and I think where we are  
4 is that we will endeavor to provide Apple, probably today,  
5 with 500 documents for additional priority review. Apple  
6 said that it has another 500, so together it's 1,000, and we  
7 will probably provide those to the special masters, with a  
8 request for them to issue their next report no later than  
9 next Wednesday, whether they've gone through the 1,000 or  
10 some portion thereof, so that Apple can still, under the new  
11 compressed time line, produce what it can, and we can object  
12 to your Honor if necessary.

13 And I think the parties are in agreement that there is  
14 diminishing utility in further prioritization, because there  
15 is some meaningful breakage in prioritizing and changing the  
16 order, and pulling out documents and pulling other files in,  
17 and so we'd probably, with that, finish the prioritization,  
18 since it's not going to be on time for the hearing, anyway.

19 THE COURT: Thank you.

20 Let me turn to Apple, and first Epic has recited  
21 agreements between the parties. If you see things  
22 differently, or if you don't think that Epic phrased it  
23 quite right, please let me know, and then please give me any  
24 status updates that you would like to provide.

25 MR. PERRY: Thank you, your Honor. Nothing

1 further. If I could just tick through the six categories,  
2 we do mainly have agreement. I have a couple  
3 clarifications, really. I just want to make sure we are in  
4 alignment.

5       Number one is on the accelerated production of  
6 documents before the hearing. We have agreed to that. Just  
7 one clarification. We're going to produce the documents as  
8 to which the redactions are sustained by Tuesday, the 18th.  
9 For the overruled documents, we are going to endeavor to do  
10 it by Tuesday, but it may slip to Wednesday, and it may be  
11 some on one day and some on the other, and I think we  
12 explained that to Mr. Even earlier. It's just a matter of  
13 the number of the documents.

14       Otherwise, we will make best efforts to do the 72-hour  
15 rule, or the 72-hour guideline that Mr. Even described. We  
16 agree with that for next week. So, number one, I think we  
17 have an agreement just with that one change from Tuesday to  
18 Wednesday.

19       Second, on the hiatus, we do agree that it makes sense  
20 for all parties to take a breather during the hearing from  
21 the objection and response process, and we do agree that  
22 starting that for objections due on Thursday, the 20th of  
23 February, is fine.

24       We actually had not discussed the end date. Mr. Even  
25 just now proposed February 28th, which is the Friday of a

1 trial week. I would propose Monday, March 3rd, because the  
2 same troops are going to be in trial and traveling and  
3 wherever, and I don't think it makes a material difference  
4 of timing just to shift it from Friday to Monday. So I  
5 would propose Monday, March 3rd, for the resumption date,  
6 just for humanity's sake.

7       We do -- we, Apple, do have a concern on this hiatus  
8 issue. We completely agree it makes sense. The objection  
9 dates are actually set forth in the protocol that was  
10 entered as an order by Judge Gonzalez Rogers, so we wanted  
11 to raise it with your Honor in the first instance, to  
12 inquire whether -- you know, the parties are in agreement.  
13 Do we need a stipulation or an order or an amendment or  
14 something? We just want to make sure that nobody here is --  
15 we're all in agreement, but we do have a court order that  
16 works a little bit differently, in other words. So that's a  
17 procedural question we have.

18       THE COURT: Here is what I think you should do.  
19 It sounds like the parties have reached agreements that  
20 would modify the protocol that Judge Gonzalez Rogers has  
21 approved. So I think you should take those agreements and  
22 put them into a stipulation and proposed order set up for  
23 her signature.

24       MR. PERRY: We can do that, your Honor. Thank  
25 you.



1       The third issue is the -- Epic's objections to  
2 documents that have redactions. We do -- we, Apple, do  
3 think this is covered by the protocol. However, we are  
4 happy to work with Epic on it. They have given us a  
5 proposal that we are working on, and we'll get back to them,  
6 and I think there's a path to a resolution here, and there's  
7 nothing today to be resolved.

8       The fourth, yes, the special masters are meeting on the  
9 issue that Epic has raised to them next Tuesday, the 18th,  
10 and the document number five, document 1219, the parties,  
11 I'm quite sure, are going to reach an agreement.

12       And, number six, the prioritization. Epic identified  
13 the first thousand documents, according to Judge Gonzalez  
14 Rogers' order. They've already gone to the special master.  
15 Most of them have already been reviewed. The second  
16 thousand will be split, 500/500, by the parties, and then I  
17 think the parties are in agreement, as Mr. Even indicated,  
18 that the remainder of the documents would then proceed in  
19 the way they had been doing before the prioritization  
20 system, in other words, the -- it would go back to last  
21 week's methodology.

22               THE COURT: Thank you for the update.

23       Epic, did you want to respond to anything Apple just  
24 said?

25               MR. EVEN: So the only thing that I think that I

1 heard -- so, first of all, I agree that Apple did say, and  
2 that's my omission, that some of these may slip to  
3 Wednesday. I agree with that. I do think that we had  
4 discussed the hiatus to the 28th, but I'm sure we can agree  
5 on the following Monday. I will confirm with my client and  
6 get back to Apple on that, but I don't foresee an issue.

7 THE COURT: All right. Thank you.

8 Then let me ask the parties, do you think there would  
9 be any utility for scheduling another discovery status  
10 conference? It would presumably be after the evidentiary  
11 hearings at the end of February.

12 Let me ask Epic for your thoughts.

13 MR. EVEN: I would -- if it doesn't impose on your  
14 Honor, I would ask that we schedule something, and take it  
15 off again if it's not necessary. We do have this issue of  
16 the objection to redactions that I hope we can resolve, but  
17 I don't know, and I don't know what's going to come out of  
18 the -- after the hearing. So I would ask for it to be on  
19 calendar, and, hopefully, we can take care of.

20 THE COURT: It's fine if either side wants the  
21 hearing. I'm happy to schedule one, and then you can take  
22 it off calendar if you don't need it.

23 Apple, is that fine with you?

24 MR. PERRY: We have no objection, your Honor.  
25 We've been on a biweekly schedule. That would put it to the

1 28th, which creates the same issue I just identified as the  
2 Friday of a trial week. Perhaps making it a three-week  
3 cadence this time, which would be Friday, March 7th, would  
4 let us get through the hearing, take a deep breath, and then  
5 come back to this Court with anything that might remain  
6 after that.

7 THE COURT: The 7th poses difficulties for me, but  
8 I could do Friday, March 14th, if that would work for the  
9 parties.

10 MR. PERRY: It's fine with Apple, your Honor.

11 MR. EVEN: The only concern we have there, your  
12 Honor, is about this objection to the redactions, just  
13 because, if we can't reach resolution, then the time is  
14 ticking against us, essentially, as to when those need to be  
15 resolved, or need to be filed, at least. So that's my only  
16 concern. So, between the 14th and the 28th, I would go for  
17 the 28th. If your Honor can't do the 7th, then I would  
18 prefer the 28th, and maybe we can talk about whether the  
19 parties absolutely need a status report in the chance that  
20 even will be at the hearing.

21 MR. PERRY: Your Honor, may I propose -- I think  
22 we're going to come to an agreement on this issue, just  
23 so -- and we're just not done yet. It was raised, you know,  
24 today or yesterday. What if we try to reach agreement, and  
25 if we don't, we submit a joint discovery letter, and the

1 Court may be able to decide it on the papers or convene a  
2 hearing, at the Court's convenience, on it, if we can't  
3 reach an agreement?

4 THE COURT: I think that approach makes sense. If  
5 the parties are unable to reach an agreement, then please  
6 file a joint discovery letter brief, and then I can schedule  
7 a hearing to address that issue, or, if there are any issues  
8 that come up that you need some assistance with, please file  
9 a joint discovery letter brief, and then I can schedule a  
10 hearing and talk with the parties.

11 However, in the meantime, I'm going to schedule our  
12 next regularly scheduled status conference for March 14th at  
13 1:00 p.m., but, again, if issues come up, or disputes come  
14 up in advance of then that you would like to brief, please  
15 do so, and I'll be happy to schedule another hearing to talk  
16 with the parties about those issues, and then your next  
17 regularly scheduled discovery status report will be due on  
18 March 13th.

19 Is there anything else that Epic would like to raise at  
20 the hearing today?

21 MR. EVEN: No, thank you, your Honor.

22 THE COURT: And is there anything else that Apple  
23 would like to raise?

24 MR. PERRY: Nothing from Apple, your Honor.

25 THE COURT: All right. Thank you, Counsel. The

1 matter is submitted. Have a good afternoon.

2 MR. EVEN: Thank you.

3 THE CLERK: Thank you.

4 (Proceedings adjourned at 1:18 p.m.)

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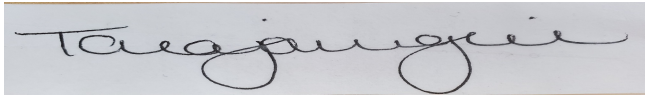
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I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Tara Jungi", is centered on a light gray rectangular background.

Echo Reporting, Inc., Transcriber

Tuesday, February 18, 2025